

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Jerry Davis,) Civil Action No.: 3:12-1899-MGL
)
Plaintiff,)
)
vs.) **ORDER AND OPINION**
)
Michael J. Stobbe,)
)
Defendant.)
)

Plaintiff Jerry Davis (“Plaintiff”) is a state prisoner at the Evans Correctional Institution of the South Carolina Department of Corrections (“SCDC”). On July 18, 2012, Plaintiff, proceeding pro se, filed this civil action against Michael J. Stobbe (“Defendant”), an employee of SCDC, relating to the calculation of his release date. (ECF No. 1.) In accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 D.S.C., this matter was referred to United States Magistrate Judge Joseph R. McCrorey for pretrial handling. On August 29, 2012, Magistrate Judge McCrorey issued a Report and Recommendation recommending *inter alia* that the court dismiss Plaintiff’s complaint without prejudice and service of process as the relief requested by Plaintiff is not available as a civil rights action under 42 U.S.C. § 1983. (ECF No. 11 at 3-4.)

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. 28 U.S.C. § 636(b)(1). The court may also receive further evidence or recommit the matter to the Magistrate Judge with instructions. *Id.* The court is charged with making a *de novo* determination of those

portions of the Report and Recommendation to which specific objections are made. Plaintiff was advised of his right to file objections to the Report and Recommendation. (ECF No. 11 at 5.) Plaintiff has filed no objections and the time for doing so has expired. In the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”

Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

After a careful review of the record, the applicable law, and the Report and Recommendation, the court finds the Magistrate Judge’s recommendation to be proper. Accordingly, the Report and Recommendation is incorporated herein by reference and this action is DISMISSED without prejudice and without service of process.

IT IS SO ORDERED.

s/Mary G. Lewis
United States District Judge

Spartanburg, South Carolina
October 24, 2012